
Advocacy for Fairness in Sports September Newsletter



Share



Tweet



Forward

September 3, 2019

Dear Retired Players and Families,

Last month's [newsletter](#) focused on some very disturbing news--that of the NFL seeking to [permanently disqualify players from settlement participation and pursue criminal fraud charges](#) if the NFL believes they've misrepresented an aspect of their claim.

I'll start this month's news with a follow-up to that story. Instead of issuing a blanket determination on the NFL's objection, Judge Brody ruled (off the docket, of course) on the five individual claims impacted. While I've been unable to obtain documents, I have learned from three credible sources that Brody ruled in favor of one player and against the other four, but she declined to impose the NFL's requested penalties against them. Instead of disqualification or pursuing charges, she has instructed the players to submit new claim packages, correcting the "misrepresentations" found in the originals.

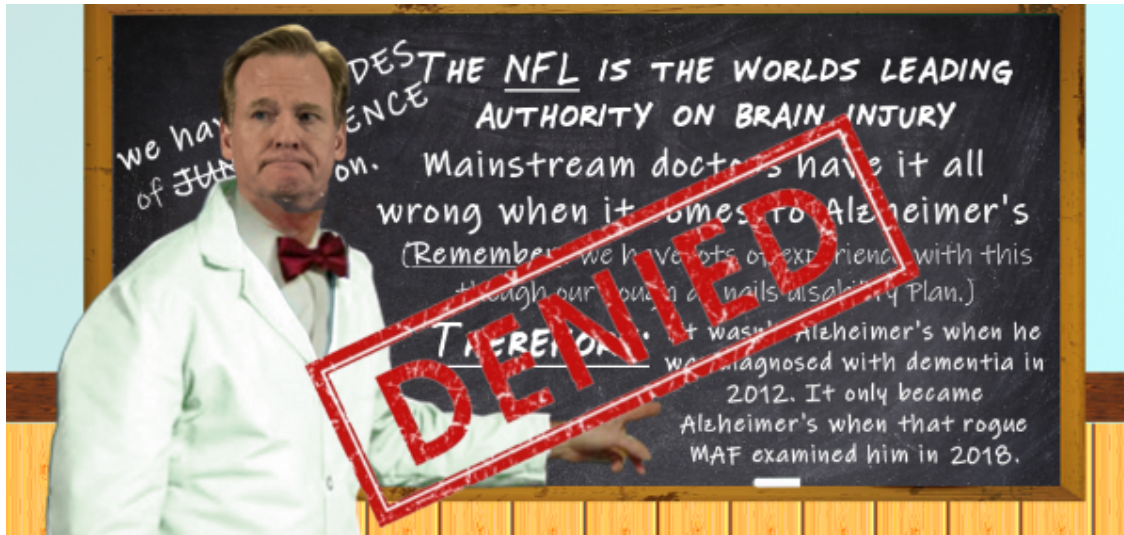
In most instances, this would entail specific reporting of driving habits, i.e., if the player or his informant stated previously that he doesn't drive, and the NFL captured video of the player driving, the new claim packet would have to describe the details and instances in which the player drives.

Bottom line--players have dodged a bullet for the time being. In ruling on the claims individually, these players, and the class as a whole have avoided the danger of disqualification or imprisonment at present, but the NFL is a leopard that doesn't change its spots, so I don't expect the issue to go away. The NFL can and probably will raise it at another point in the future. Just as Judge Brody initially deferred on a decision to appoint a special fraud investigator, she may also be deferring on a blanket ruling on these issues.

The best thing players can do to protect themselves is to be very honest with doctors regarding activities and functional ability, and if they don't already have an attorney representing them, hire experienced

counsel to represent them in the claim process. The NFL is very devious and becoming more and more aggressive in their war against dementia claims. It's important to have representation that understands both the medical issues and the Settlement Agreement along with the myriads of FAQs and Special Masters' rules in order to have the greatest chance at claim approval.

The past month represented a flurry of activity in the settlement including some disturbing developments tempered with some slivers of good news. I'll start with the good.



Attorneys Foil NFL's Junk Science Objection in Concussion Settlement

This story is about one of Judge Brody's implementation rulings that occurred during the month of August. It involved a player who has suffered the effects of Alzheimer's disease since around 2002, and who received a dementia diagnosis in 2012 but didn't obtain an official diagnosis of Alzheimer's disease until he was examined by a MAF neurologist in 2018. The MAF entered a diagnosis date of 2012 based on his examination of the player and a review of his prior medical records. The NFL objected to the MAF dating the diagnosis prior to the date of his examination of the player. This story details the NFL's junk science arguments and how dual supporting briefs by the player's attorney David Langfitt and Class Counsel Chris Seeger overcame them for a big win for this player and others similarly situated.

[Continue reading](#)

Another story reported by Advocacy for Fairness in Sports last month told the tale of how several players were defrauded of their life's savings by the attorney who "represented" their claims in the NFL Concussion Settlement. I'm pleased to report that the U.S. Securities and Exchange Commission (SEC) has now filed a complaint against Tim Howard, Don Reinhard, and Cambridge Capital for the fraud perpetrated against these players. [You can catch this update here.](#)

Now that I've recapped the good, it's time to relay the bad.



Infinite Audits Are Ok Rules NFL Concussion Settlement Judge Rules

Excessive audits don't appear to be dissipating any time soon since Judge Brody's ruling on a motion by X1 Law to limit audits to one per claim was denied. Aside from the audits themselves, the most troubling takeaway from this decision is that Judge Brody only appears to be listening to (or even reading the arguments) of only a few select people involved in the settlement, and this poses a stark abandonment of due process that should be applied to all claimants and their attorneys instead of just a select few.

[Continue reading](#)

There's been no shortage of docket activity, nor stories to write about. Here's a sample of the offerings that are of greatest interest to Retired NFL.



New Forms Set Retired Players Up for NFL Ambush

This related to both the audit story and the NFL's attempts to disqualify and impose criminal prosecution against retired NFL players whose reporting of activities doesn't match exactly with what their private investigators have been able to manufacture.

Players and their informants are now being asked to complete comprehensive forms detailing virtually every aspect of their lives and activities over the past five years. Asking players suffering from dementia to recall this much information in such detail is a recipe for disaster.

[Continue reading](#)

One of the biggest and most important stories we reported over the past month involved Amon Gordon's appeal to the Third Circuit. Gordon is the first player to appeal the denial of his claim to the higher court, and if he should be successful, it is

likely to pave the way for others. As with many other claims, Gordon's denial occurred because the incorrect post-effective date application of "generally consistent" was applied to his pre-effective date claim. We've written several articles detailing the twists, turns, challenges, and potential gains that could be made through a successful bid at the appeals court.



EXCLUSIVE: NFL's Latest Dirty Deed Has Been Exposed

We first began reporting on this story in July when we discovered the details behind the denial of Amon Gordon's settlement claim, following a very cryptic ruling by Judge Brody that included no documents supporting her denial and favorable determination for the NFL. If you missed the

story when it was first reported, or need a refresher, you can find all the details by clicking below.

[Continue reading](#)



Psychology, Sociology and Law Converge in Amon Gordon's NFL Concussion Appeal to the Third Circuit

The previous story was updated to indicate an appeal to the Third Circuit had been filed, and that the Third Circuit requested briefing as to why the appellate court should hear the appeal based on the settlement language stating that the district court's decision is

"final and binding." This story picks up where the other left off, examining the briefings with a surprising twist. The concept for the graphic in this story was suggested by a player, who after reading the documents picked up a sensitive and somewhat controversial aspect of the settlement. Read and decide for yourself.

[Continue reading](#)



Player's Concussion Settlement Motion Puts Judge on the Hotseat

In the story linked above, I noted how in addition to filing an appeal, Amon Gordon's attorney took an additional step by asking the Third Circuit to stay the appeal while she filed a Rule 60 Motion in district court. A Rule 60 motion is a seldom used measure to request that the court correct a mistake that results in "manifest injustice."

This article looks closely at the Rule 60 Motion which essentially tells the judge, "correct the error or we'll take the dirty laundry to the Third Circuit." The Rule 60 Motion also gives Gordon two chances to obtain a favorable ruling rather than one.

[Continue reading](#)

In addition to the legal aspect of the Gordon appeal and Rule 60 motion and how they can impact the class as a whole, a spinoff taken from the Gordon claim when contrasted with Andrew Luck's unexpected retirement shows two very different NFLs. This was one of the most widely read and commented on articles of the month.



Two Stanford Alumni. Two Very Different NFLs for Andrew Luck and Amon Gordon

Over the weekend Colts' quarterback, Andrew Luck startled the NFL world with his decision to retire at the relatively young age of 29. As [Ken Belson writes](#), in the New York Times, "Luck belongs to a young generation more carefully weighing the dangers of the game against the financial rewards." He's also one of a very small sector of NFL players who are able to walk away from the game on their own terms.

[Continue reading](#)

As noted previously, it's been a very busy docket month and that extends beyond the Concussion Settlement to numerous other cases of interest.

An appeal brief has been filed at the Ninth Circuit attempting to revive Richard Dent's painkiller lawsuit against the NFL. We haven't yet written about the new brief, but hope to have a story up in the next day or so, at which time you'll be able to find it on our [homepage](#).

We've written about several other lawsuits involving NFL or retired NFL players and a social justice initiative by WNBA's New York Liberty, all of which can be located through the [homepage](#) of the blog.

One final story we'd like to call your attention to is a new disability lawsuit filed by Charles Dimry.



NFL Denies Benefits to Retired Player Because it 'Strongly Disagrees' with Federal Judge

When Judge James Donato of the U.S. District Court for the Northern District of California entered a scathing review of the NFL Disability Plan's abuse of discretion when he granted summary judgment in favor of Charles Dimry in March 2018. Dimry's court victory was considered a huge win not only for Dimry but for other retired players whose disability had been denied based solely on Plan doctors retained by the Bert Bell Pete Roselle Benefits Plan.

In a shocking development, Dimry is back in court, again seeking benefits because, according to his complaint, the Plan "strongly disagreed" with Judge Donato.

[Continue reading](#)

Sorry for the length of this one - I guess you'd probably agree it's been a very busy month! We're always interested in talking to players and members of their families who'd like to relate their own stories to the public and you can reach Sheilla directly by responding to this newsletter. We also welcome any input regarding story ideas or questions about the stories we've published.

As you might imagine, it takes a lot of time and resources to put all of this together every month, but we are committed to our goal of providing investigative journalism with a moral force lacking in mainstream media in hopes of bringing positive change.

While we realize the NFL's misdeeds have left many of you in a precarious financial situation, it is greatly appreciated when those who are able to contribute to help us to continue providing the information you've come to expect from Advocacy for Fairness in Sports. As a side-note, we received final verification of our 501(c)(3) status on August 1, and while we

are not yet showing up in the IRS's charity search, our status can be verified by contacting the IRS and providing our EIN number: 83-4527989. This means your contributions are tax-deductible. You can make a donation by clicking below:

[Donate Now!](#)



Best wishes,

Sheilla

